

1 GONZALEZ & FLORES LAW FIRM

2 Rodolfo Gonzalez, Esq.
3 Nevada Bar No. 12751
4 Rodolfogonzalezlaw@gmail.com

5 Edgar Flores, Esq.
6 Nevada Bar No. 13130
7 Edgarfloreslaw@gmail.com
8 879 N. Eastern Ave.
9 Las Vegas, NV 89101
10 Tel: 702-778-3030
11 Fax: 702-920-8657

12 CLAGGETT & SYKES LAW FIRM

13 Sean Claggett, Esq.
14 Nevada Bar No. 008407
15 Sean@claggettlaw.com
16 Steve Lewis, Esq.
17 Nevada Bar No. 7064
18 Steve@claggettlaw.com
19 4101 Meadows Lane, Suite 100
20 Las Vegas, NV 89107
21 Tel: 702-655-2346
22 Fax: 702-655-3763

23 UNITED STATES DISTRICT COURT
24 DISTRICT OF NEVADA

25 ***

26 JEANNE LLERA and JORGE L.
27 GOMEZ, as the appointed co-special
28 administrators of the estate of JORGE A.
GOMEZ; JEANNE LLERA; and JORGE
L. GOMEZ,

Plaintiffs,

vs.

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT; RYAN
FRYMAN; DAN EMERTON;
VERNON FERGUSON; ANDREW
LOCHER; and DOES 1-10, inclusive,

Defendants.

Case No.

COMPLAINT FOR DAMAGES

1. Violation of Free Speech- Right to Peaceful Protest (42 U.S.C. § 1983)
2. Unreasonable Search and Seizure—Excessive Force (42 U.S.C. § 1983)
3. Unreasonable Search and Seizure—Denial of Medical Care (42 U.S.C. § 1983)
4. Substantive Due Process—(42 U.S.C. § 1983)
5. Municipal Liability for Unconstitutional Custom, Practice, or Policy (42 U.S.C. § 1983)
6. Municipal Liability— Failure to Train (42 U.S.C. § 1983)
7. Municipal Liability— Ratification (42 U.S.C. § 1983)

8. Battery (Wrongful Death/Survival)
9. Negligence (Wrongful Death/Survival)

DEMAND FOR JURY TRIAL

COMPLAINT FOR DAMAGES

Plaintiffs JEANNE LLERA and JORGE L. GOMEZ, as the appointed co-special administrators of the estate of JORGE A. GOMEZ, JEANNE LLERA and JORGE L. GOMEZ, for their Complaint against Defendants LAS VEGAS METROPOLITAN POLICE DEPARTMENT, RYAN FRYMAN, DAN EMERTON, VERNON FERGUSON, ANDREW LOCHER, AND DOES 1-10, inclusive, allege as follows:

INTRODUCTION

1. This civil rights action seeks compensatory and punitive damages from Defendants for violating various rights under the United States Constitution and state law in connection with the fatal police shooting of the decedent, Jorge A. Gomez.

PARTIES

2. At all relevant times, JORGE A. GOMEZ ("DECEDENT") was an individual residing in Clark County, Nevada.

3. Plaintiffs JEANNE LLERA and JORGE L. GOMEZ are the court-appointed co-special administrators of the estate of DECEDENT. Plaintiffs JEANNE LLERA and JORGE L. GOMEZ sue in their representative capacities as the appointed co-special administrators of the estate of DECEDENT and seek survival damages under both federal and state law.

4. Plaintiff JEANNE LLERA is an individual residing in the County of Osceola, Florida, and is the mother of DECEDENT. JEANNE LLERA sues in her individual capacity as the mother of DECEDENT. JEANNE LLERA seeks wrongful death damages under both federal and state law.

1 5. Plaintiff JORGE L. GOMEZ is an individual residing in the County of
2 Clark, Nevada, and is the father of DECEDENT. JORGE L. GOMEZ sues in his
3 individual capacity as the father of DECEDENT. JORGE L. GOMEZ seeks
4 wrongful death damages under federal and state law.

5 6. At all times herein mentioned, Defendant, LAS VEGAS
6 METROPOLITAN POLICE DEPARTMENT (hereinafter “LVMPD”) is and was at
7 all relevant times mentioned herein, a political subdivision of Clark County, a
8 municipality duly organized and existing under the laws of the State of Nevada.

9 7. Defendant RYAN FRYMAN is an individual, and a LVMPD Police
10 Officer.

11 8. Defendant DAN EMERTON is an individual, and a LVMPD Police
12 Officer.

13 9. Defendant VERNON FERGUSON is an individual, and a LVMPD
14 Police Officer.

15 10. Defendant ANDREW LOCHER is an individual, and a LVMPD Police
16 Officer.

17 11. At all relevant times, LVMPD was the employer of Defendants RYAN
18 FRYMAN, DAN EMERTON, VERNON FERGUSON and ANDREW LOCHER,
19 who were LVMPD police officers. At all relevant times DOES 1 through 5 (“DOE
20 OFFICERS”) were members of law enforcement, including, but not limited to,
21 LVMPD police officers. At all relevant times, DOES 6 through 10 (“DOE
22 SUPERVISORS”) who were managerial, supervisory, and policymaking
23 employees of LVMPD. Officers FRYMAN, EMERTON, FERGUSON, LOCHER
24 and DOE OFFICERS are sued in their individual capacity for damages only.

25 12. The true names and capacities of Defendants DOES 1 through 10,
26 inclusive, are unknown to Plaintiffs who therefore sue these Defendants by such
27 fictitious names. Plaintiffs will seek leave to amend this complaint to show the true
28 names and capacities of these Defendants when they have been ascertained. Each of

1 the fictitiously named defendants is responsible in some manner for the conduct or
2 liabilities alleged herein.

3 13. At all times herein Officers FRYMAN, EMERTON, FERGUSON,
4 LOCHER, some of the DOE OFFICERS and all DOE SUPERVISORS were duly
5 authorized employees and agents of the LVMPD who were acting under color of
6 law, within the course and scope of their respective duties as police officers and
7 with the complete authority and ratification of their principal, Defendant LVMPD.

8 14. At all times herein, each and every Defendant was the agent of each
9 and every other defendant and had the legal duty to oversee and supervise the hiring,
10 conduct, employment, and discipline of each and every Defendant herein.

11 15. In doing the acts and in failing or omitting to act as hereafter described,
12 Officers FRYMAN, EMERTON, FERGUSON, LOCHER, some of the DOE
13 OFFICERS and all the DOE SUPERVISORS were acting with the implied and
14 actual permission and consent of Defendant LVMPD.

15 16. At all times herein mentioned, all defendants, named and unnamed,
16 were and are duly appointed officers, agents, and/or employees of Defendant
17 LVMPD or of another local law enforcement agency.

18 17. At all times herein, each and every defendant was the agent of each and
19 every other Defendant and had the legal duty to oversee and supervise the hiring,
20 conduct, employment, and discipline of each and every defendant named and
21 unnamed in this complaint.

22 18. In doing the acts and in failing or omitting to act as hereafter described,
23 Defendants were acting with the implied and actual permission and consent of
24 Defendant LVMPD. The involved officers were acting under the color of law and
25 under the course and scope of their employment with the LVMPD and/or of another
26 local law enforcement agency.

1 26. On June 1, 2020, DECEDENT had encountered several members of
2 law enforcement, including LVMPD officers, while peacefully protesting at the
3 BLM demonstration (just as had occurred during the prior protests he attended).
4 DECEDENT walked by several police officers while at the protest on Las Vegas
5 Blvd., and even waved at some of the police officers as he passed by them. Despite
6 encountering several members of law enforcement while protesting, DECEDENT
7 was never even approached by any of these officers because he was not in violation
8 of any law by attending the BLM protest with his guns on him.

9 27. At approximately 11:00 p.m., members of law enforcement began an
10 operation to disperse the BLM protestors, including DECEDENT, despite the
11 protestors engaging in a peaceful demonstration and exercising their constitutionally
12 protected right to peaceful protest/freedom of assembly under the First Amendment.

13 28. In compliance with the order to disperse from law enforcement,
14 DECEDENT left the BLM protest and began to walk towards his parked vehicle so
15 he could leave the area. DECEDENT's vehicle was parked on the street near the
16 area of the Lloyd D. George Federal Courthouse in Downtown Las Vegas.

17 29. On information and belief, while walking back towards his parked
18 vehicle so he could leave the area, members of law enforcement near the
19 courthouse, including, but not limited to, members of LVMPD, began to fire several
20 less than lethal rounds at DECEDENT, striking him multiple times, causing him
21 severe pain and suffering.

22 30. The involved officers did not give a verbal warning prior to firing less
23 than lethal rounds at DECEDENT, despite being feasible to do so.

24 31. On information and belief, law enforcement, including, but not limited
25 to, members of LVMPD, discharged and struck DECEDENT with the less than
26 lethal rounds that they were firing at him.

1 32. In response to the less than lethal rounds being fired at and striking
2 DECEDENT, he began to run away in the opposite direction from where the officers
3 were positioned who were shooting him.

4 33. DECEDENT did not charge at or run in the direction of the officers
5 who were firing and striking him with the less then lethal rounds. Further,
6 DECEDENT never verbally threatened any of these officers, he never pointed a gun
7 at anyone, including the involved officers, and he never fired his weapon at any
8 point during the incident, nor did he attempt to do so.

9 34. While DECEDENT was running away from the officers near the
10 Courthouse who were shooting him with less than lethal rounds, Officers
11 FRYMAN, EMERTON, FERGUSON and LOCHER discharged their firearms at
12 DECEDENT, striking him several times, causing DECEDENT serious physical
13 injury and eventually killing him.

14 35. Officers FRYMAN, EMERTON, FERGUSON and LOCHER fired a
15 total of nineteen (19) shots at DECEDENT, including shots as DECEDENT was
16 going to the ground and after he had already went down to the ground.

17 36. Officers FRYMAN, EMERTON, FERGUSON and LOCHER did not
18 give DECEDENT a verbal warning that deadly force would be used prior to the
19 shooting, despite being feasible to do so. Further, DECEDENT was not wanted for
20 any crime and there was no information that DECEDENT had physically injured
21 anyone.

22 37. DECEDENT did not charge at Officers FRYMAN, EMERTON,
23 FERGUSON and LOCHER. Instead, DECEDENT was running away in the
24 opposite direction of the officers who were shooting him with less than lethal
25 rounds. Further, DECEDENT never verbally threatened anyone, including the
26 involved officers, he never pointed a gun at anyone, including at the involved
27 officers, and he never fired his weapon at any point during the incident, nor did he
28 attempt to do so.

38. Officers FRYMAN, EMERTON, FERGUSON and LOCHER may have simply overreacted when they heard the less than lethal rounds being fired at DECEDENT and saw DECEDENT running with his guns on his person. Prior to, and during the shooting, DECEDENT had not committed any serious crime and Officers FRYMAN, EMERTON, FERGUSON and LOCHER had no information that DECEDENT had committed a serious crime.

39. On information and belief, FRYMAN, EMERTON, FERGUSON and LOCHER were members of LVMPD's Development Bureau, range training staff, so they would not normally work patrol in the field. This may have also contributed to them overreacting and using excessive and unreasonable deadly force against DECEDENT.

FIRST CLAIM FOR RELIEF

Violation of Free Speech- Right to Peaceful Protest (42 U.S.C. § 1983) (Against Defendants FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-5)

40. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through 39 of this Complaint with the same force and effect as if fully set forth herein.

41. Defendants FRYMAN, EMERTON, FERGUSON, LOCHER and DOES 1-5 caused DECEDENT to be deprived of his rights under the First Amendment to the Constitution when they shot DECEDENT with both nonlethal rounds and lethal rounds after he had just been peacefully protesting at a BLM demonstration, then began to walk to his parked vehicle so he could leave the area in compliance with a law enforcement order to disburse which had recently been issued to the protestors.

42. Under the First Amendment, a citizen has the right to peacefully protest and the right to freedom of assembly.

1 43. While DECEDENT was peacefully protesting at the BLM
2 demonstration, DECEDENT was engaged in a constitutionally protected activity.
3 Defendants FRYMAN, EMERTON, FERGUSON, LOCHER and DOES 1-5's
4 actions against DECEDENT, including, but not limited to, shooting him several
5 times with both nonlethal and lethal rounds, would chill a person of ordinary
6 firmness from continuing to engage in this protected activity.

7 44. DECEDENT's constitutionally protected activity of peacefully
8 protesting was a substantial or motivating factor in Defendants FRYMAN,
9 EMERTON, FERGUSON, LOCHER and DOES 1-5's conduct.

10 45. Defendants FRYMAN, EMERTON, FERGUSON, LOCHER and
11 DOES 1-5 were acting under color of state law when they shot DECEDENT with
12 both nonlethal and lethal rounds, and thus violated DECEDENT's First Amendment
13 rights.

14 46. As a direct and proximate cause of the acts of FRYMAN, EMERTON,
15 FERGUSON, LOCHER and DOES 1-5, DECEDENT experienced severe pain and
16 suffering and lost his life and earning capacity. Plaintiffs are also claiming funeral
17 and burial expenses under this claim.

18 47. As a result of the conduct of FRYMAN, EMERTON, FERGUSON,
19 LOCHER and DOES 1-5, they are liable for DECEDENT'S injuries, either because
20 they were integral participants in the violation of his freedom of speech rights under
21 the First Amendment, or because they failed to intervene to prevent these violations.

22 48. The conduct of FRYMAN, EMERTON, FERGUSON, LOCHER and
23 DOES 1-5 was willful, wanton, malicious, and done with reckless disregard for the
24 rights and safety of DECEDENT and therefore warrants the imposition of
25 exemplary and punitive damages as to Defendants FRYMAN, EMERTON,
26 FERGUSON, LOCHER and DOES 1-5.

49. Plaintiffs JEANNE LLERA and JORGE L. GOMEZ, bring this claim as the appointed co-special administrators of the estate of DECEDENT JORGE A. GOMEZ and seek survival damages for the violation of DECEDENT's rights.

50. Plaintiffs also seek attorney fees under this claim.

SECOND CLAIM FOR RELIEF

Unreasonable Search and Seizure—Excessive Force (42 U.S.C. § 1983)

(Against Defendants FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES
1-5)

51. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through 50 of this Complaint with the same force and effect as if fully set forth herein.

52. Defendants FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-5's unjustified shooting (both nonlethal and lethal rounds) deprived DECEDENT of his right to be secure in his persons against unreasonable searches and seizures as guaranteed to DECEDENT under the Fourth Amendment to the United States Constitution and applied to state actors by the Fourteenth Amendment.

53. The unreasonable use of force by Defendants FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-5 deprived the DECEDENT of his right to be secure in his person against unreasonable searches and seizures as guaranteed to DECEDENT under the Fourth Amendment to the United States Constitution and applied to state actors by the Fourteenth Amendment.

54. As a result, DECEDENT suffered extreme mental and physical pain and suffering, loss of enjoyment of life and eventually suffered a loss of life and of earning capacity. Plaintiffs are also claiming funeral and burial expenses under this claim.

55. As a result of the conduct of Defendants FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-5, they are liable for DECEDENT's injuries.

1 either because they were integral participants in the excessive force, or because they
2 failed to intervene to prevent these violations.

3 56. This use of force, both deadly and non-deadly force, was excessive and
4 unreasonable under the circumstances, especially since DECEDENT had been
5 peacefully protesting and then complied with law enforcement's disbursement order
6 by walking back to his parked vehicle so he could leave the area when he was shot
7 with both nonlethal and lethal rounds, he never pointed a gun at anyone, including
8 the involved officers, he never fired his weapon, nor did he attempt to do so, he
9 never verbally threatened anyone, he had not committed any crime, let alone a
10 serious crime and the involved officers had no information that he committed a
11 serious crime, DECEDENT never physically injured anyone prior to the shooting,
12 nor did he attempt to do so, DECEDENT was not in violation of any laws by
13 attending the BLM protest with his guns, some of the gunshots occurred as
14 DECEDENT was going to the ground and after he had already went down to the
15 ground, DECEDENT did not pose an immediate threat of death or serious bodily
16 injury to anyone, including to the involved officers, the involved officers did not
17 give a warning before firing both the nonlethal and lethal rounds, despite being
18 feasible to do so and FRYMAN, EMERTON, FERGUSON and LOCHER had less
19 than lethal options on them which they failed to exhaust before resorting to the use
20 of deadly force, despite being feasible to do so. Defendants' actions thus deprived
21 DECEDENT of his right to be free from unreasonable searches and seizures under
22 the Fourth Amendment and applied to state actors by the Fourteenth Amendment.

23 57. Defendants FRYMAN, EMERTON, FERGUSON, LOCHER, and
24 DOES 1-5 retaliated against DECEDENT for exercising his First Amendment rights
25 to free speech, to peacefully protest and freedom of assembly, by using excessive
26 and unreasonable force against him, including deadly force, in violation of his
27 Fourth Amendment rights. Further, Defendants FRYMAN, EMERTON,
28 FERGUSON, LOCHER, and DOES 1-5, retaliated against DECEDENT for

1 exercising his Second Amendment rights to bear arms (and in compliance with
2 Nevada’s “open carry” laws), by using excessive and unreasonable force against
3 him, including deadly force, in violation of his Fourth Amendment rights.

4 58. The conduct of Defendants FRYMAN, EMERTON, FERGUSON,
5 LOCHER, and DOES 1-5 was willful, wanton, malicious, and done with reckless
6 disregard for the rights and safety of DECEDENT and therefore warrants the
7 imposition of exemplary and punitive damages as to Defendants FRYMAN,
8 EMERTON, FERGUSON, LOCHER, and DOES 1-5.

9 59. Plaintiffs JEANNE LLERA and JORGE L. GOMEZ, bring this claim
10 as the appointed co-special administrators of the estate of DECEDENT JORGE A.
11 GOMEZ and seek survival damages for the violation of DECEDENT’s rights.

12 60. Plaintiffs also seek attorney fees under this claim.

13
14 **THIRD CLAIM FOR RELIEF**

15 **Unreasonable Search and Seizure—Denial of Medical Care (42 U.S.C. § 1983)**
16 (Against Defendants FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES
17 1-5)

18 61. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
19 through 60 of this Complaint with the same force and effect as if fully set forth
20 herein.

21 62. The denial of medical care by Defendants FRYMAN, EMERTON,
22 FERGUSON, LOCHER, and DOES 1-5 deprived DECEDENT of his right to be
23 secure in his person against unreasonable searches and seizures as guaranteed to
24 DECEDENT under the Fourth Amendment to the United States Constitution and
25 applied to state actors by the Fourteenth Amendment.

26 63. As a result, DECEDENT suffered extreme mental and physical pain
27 and suffering and eventually suffered a loss of life and earning capacity. Plaintiffs
28 are also claiming funeral and burial expenses and a loss of financial support.

64. Defendants FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-5 knew that failure to provide timely medical treatment to DECEDENT could result in further significant injury or the unnecessary and wanton infliction of pain, but disregarded that serious medical need, causing DECEDENT great bodily harm and death.

65. After shooting DECEDENT multiple times, FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-5 did not timely provide nor summon medical attention for DECEDENT, who was bleeding profusely and had obvious serious injuries, and FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-5 also did not allow and prevented responding medical personnel on-scene to timely render medical aid/assistance to DECEDENT.

66. The conduct of FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-5 was willful, wanton, malicious, and done with reckless disregard for the rights and safety of DECEDENT and therefore warrants the imposition of exemplary and punitive damages as to Defendants FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-5.

67. Plaintiffs JEANNE LLERA and JORGE L. GOMEZ, bring this claim as the appointed co-special administrators of the estate of DECEDENT JORGE A. GOMEZ and seek survival damages for the violation of DECEDENT's rights.

68. Plaintiffs also seek attorney fees under this claim.

FOURTH CLAIM FOR RELIEF

Substantive Due Process (42 U.S.C. § 1983)

(Against Defendants FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES
1-5)

69. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through 68 of this Complaint with the same force and effect as if fully set forth herein.

1 70. JEANNE LLERA has a cognizable interest under the Due Process
2 Clause of the Fourteenth Amendment of the United States Constitution to be free
3 from state actions that deprive her of life, liberty, or property in such a manner as to
4 shock the conscience, including but not limited to, unwarranted state interference in
5 Plaintiff's familial relationship with her son, DECEDENT.

6 71. JORGE L. GOMEZ has a cognizable interest under the Due Process
7 Clause of the Fourteenth Amendment of the United States Constitution to be free
8 from state actions that deprive him of life, liberty, or property in such a manner as to
9 shock the conscience, including but not limited to, unwarranted state interference in
10 Plaintiff's familial relationship with his son, DECEDENT.

11 72. DECEDENT had a cognizable interest under the Due Process Clause of
12 the Fourteenth Amendment of the United States Constitution to be free from state
13 actions that deprive him of his right to life, liberty, or property in such a manner as
14 to shock the conscience.

15 73. As a result of the excessive force by FRYMAN, EMERTON,
16 FERGUSON, LOCHER, and DOES 1-5, and failure of said Defendants to
17 intervene, DECEDENT died. Plaintiffs JEANNE LLERA and JORGE L. GOMEZ
18 were thereby deprived of their constitutional right of familial relationship with
19 DECEDENT.

20 74. FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-5,
21 acting under color of state law, thus violated the Fourteenth Amendment rights
22 JEANNE LLERA and JORGE L. GOMEZ to be free from unwarranted interference
23 with their familial relationship with DECEDENT.

24 75. The aforementioned actions of FRYMAN, EMERTON, FERGUSON,
25 LOCHER, and DOES 1-5, along with other undiscovered conduct, shock the
26 conscience, in that they acted with deliberate indifference to the constitutional rights
27 of DECEDENT and Plaintiffs JEANNE LLERA and JORGE L. GOMEZ, and with
28 purpose to harm unrelated to any legitimate law enforcement objective.

1 76. Defendants FRYMAN, EMERTON, FERGUSON, LOCHER, and
2 DOES 1-5, acting under color of state law, thus violated the Fourteenth Amendment
3 rights of DECEDENT and Plaintiffs.

4 77. As a direct and proximate cause of the acts of FRYMAN, EMERTON,
5 FERGUSON, LOCHER, and DOES 1-5, DECEDENT experienced severe pain and
6 suffering and lost his life and earning capacity. Plaintiffs suffered extreme and
7 severe mental anguish and pain and have been injured in mind and body. Plaintiffs
8 has also been deprived of the life-long love, companionship, comfort, support,
9 society, care and sustenance of DECEDENT, and will continue to be so deprived for
10 the remainder of their natural lives. Plaintiffs are also claiming funeral and burial
11 expenses.

12 78. As a result of the conduct of FRYMAN, EMERTON, FERGUSON,
13 LOCHER, and DOES 1-5, they are liable for DECEDENT's injuries, either because
14 they were integral participants in the denial of due process, or because they failed to
15 intervene to prevent these violations.

16 79. The conduct of FRYMAN, EMERTON, FERGUSON, LOCHER, and
17 DOES 1-5 was willful, wanton, malicious, and done with reckless disregard for the
18 rights and safety of DECEDENT and Plaintiffs and therefore warrants the
19 imposition of exemplary and punitive damages as to Defendants FRYMAN,
20 EMERTON, FERGUSON, LOCHER, and DOES 1-5.

21 80. JEANNE LLERA and JORGE L. GOMEZ bring this claim
22 individually and seek wrongful death damages for the violation of their rights.

23 81. Plaintiffs also seek attorney fees under this claim.
24

25 **FIFTH CLAIM FOR RELIEF**

26 **Municipal Liability for Unconstitutional Custom or Policy (42 U.S.C. § 1983)**

27 (Against Defendants DOES 6-10 and LVMPD)
28

1 82. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
2 through 81 of this Complaint with the same force and effect as if fully set forth
3 herein.

4 83. On and for some time prior to June 1, 2020 (and continuing to the
5 present date) Defendants DOES 6-10, who were managerial, supervisory, and
6 policymaking employees of LVMPD, deprived Plaintiffs and DECEDENT of the
7 rights and liberties secured to them by the Fourth and Fourteenth Amendments to
8 the United States Constitution, in that said defendants and their supervising and
9 managerial employees, agents, and representatives, acting with gross negligence and
10 with reckless and deliberate indifference to the rights and liberties of the public in
11 general, and of Plaintiffs and DECEDENT, and of persons in their class, situation
12 and comparable position in particular, knowingly maintained, enforced and applied
13 an official recognized custom, policy, and practice of:

14 (a) Employing and retaining as police officers and other personnel,
15 including FRYMAN, EMERTON, FERGUSON, LOCHER, and
16 DOES 1-5, who Defendants DOES 6-10, at all times material
17 herein knew or reasonably should have known had dangerous
18 propensities for abusing their authority and for mistreating
19 citizens by failing to follow written LVMPD's policies,
20 including the use of excessive and deadly force, such as fatally
21 shooting individuals;

22 (b) Of inadequately supervising, training, controlling, assigning, and
23 disciplining LVMPD Police Officers, and other personnel,
24 including FRYMAN, EMERTON, FERGUSON, LOCHER, and
25 DOES 1-5, who Defendant LVMPD knew or in the exercise of
26 reasonable care should have known had the aforementioned
27 propensities and character traits, including the propensity for
28

1 violence and the use of excessive force, including deadly force,
2 such as fatally shooting individuals;

3 (c) By maintaining grossly inadequate procedures for reporting,
4 supervising, investigating, reviewing, disciplining and
5 controlling the intentional misconduct by Defendants FRYMAN,
6 EMERTON, FERGUSON, LOCHER, and DOES 1-5, who are
7 Police Officers of LVMPD;

8 (d) By failing to discipline the LVMPD Police Officers' conduct,
9 including but not limited to, the use of excessive and
10 unreasonable force, including deadly force;

11 (e) By ratifying the intentional misconduct of Defendants
12 FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-
13 5, who are Police Officers of LVMPD;

14 (f) By having and maintaining an unconstitutional policy, custom,
15 and practice of detaining and arresting individuals without
16 probable cause or reasonable suspicion, and using excessive
17 force, including deadly force, such as fatally shooting
18 individuals, which also is demonstrated by inadequate training
19 regarding these subjects. The policies, customs, and practices of
20 DOES 6-10, were done with a deliberate indifference to
21 individuals' safety and rights;

22 (g) By failing to properly investigate claims of excessive and
23 unreasonable force, including deadly force, by LVMPD Police
24 Officers;

25 (h) By failing to institute appropriate policies regarding
26 constitutional procedures and practices for use of force,
27 including the use of less than lethal ammunitions, and firearms;
28

1 (i) By using excessive force against persons, condoning the use of
2 excessive force, and conspiring to cover-up civil rights
3 violations; and

4 (j) By totally inadequate training of its officers and other LVMPD
5 employees, including defendants FRYMAN, EMERTON,
6 FERGUSON, LOCHER, and DOES 1-5, on the aforementioned
7 issues, including use of firearms, despite clear need.

8 84. By reason of the aforementioned policies and practices of Defendants
9 DOES 6-10, DECEDENT was severely injured and subjected to pain and suffering
10 and lost his life.

11 85. Defendants DOES 6-10, together with various other officials, whether
12 named or unnamed, had either actual or constructive knowledge of the deficient
13 policies, practices and customs alleged in the paragraphs above. Despite having
14 knowledge as stated above these defendants condoned, tolerated and through actions
15 and inactions thereby ratified such policies. Said defendants also acted with
16 deliberate indifference to the foreseeable effects and consequences of these policies
17 with respect to the constitutional rights of DECEDENT, Plaintiffs, and other
18 individuals similarly situated.

19 86. By perpetrating, sanctioning, tolerating and ratifying the outrageous
20 conduct and other wrongful acts, Defendants DOES 6-10, acted with an intentional,
21 reckless, and callous disregard for the life of DECEDENT, and DECEDENT's and
22 Plaintiff's constitutional rights. Defendants DOES 6-10, each of their actions were
23 willful, wanton, oppressive, malicious, fraudulent, and extremely offensive and
24 unconscionable to any person of normal sensibilities.

25 87. Furthermore, the policies, practices, and customs implemented and
26 maintained and still tolerated by Defendants DOES 6-10, were affirmatively linked
27 to and were a significantly influential force behind the injuries of DECEDENT and
28 Plaintiffs.

1 95. The training policies of the Defendant LVMPD police department were
2 not adequate to train its police officers, including but not limited to, FRYMAN,
3 EMERTON, FERGUSON, LOCHER, and DOES 1-5, with regards to using force,
4 including deadly force. As a result, LVMPD police officers, including FRYMAN,
5 EMERTON, FERGUSON, LOCHER, and DOES 1-5, are not able to handle the
6 usual and recurring situations with which they must deal with, including individuals
7 peacefully protesting, individuals with guns on them in compliance with Nevada's
8 "open carry" laws and individuals who run away from the police. These inadequate
9 training policies existed prior to the date of this incident and continue to this day.

10 96. The Defendant LVMPD was deliberately indifferent to the known or
11 obvious consequences of its failure to train its police officers, including FRYMAN,
12 EMERTON, FERGUSON, LOCHER, and DOES 1-5, adequately with regards to
13 the use of force, including deadly force. This inadequate training includes failing to
14 teach officers to deal with individuals who are peacefully protesting, who are
15 lawfully carrying weapons in compliance with Nevada state law, who are running
16 away from the police and who do not pose an immediate threat of death or serious
17 bodily injury to the officers or others.

18 97. LVMPD has numerous officer involved shootings annually. Many of
19 these shootings involve individuals who are running away from the police and who
20 do not pose an immediate threat of death or serious bodily injury. LVMPD was
21 aware that there was a reoccurring problem with their officers shooting individuals
22 who are running away from the police and who do not pose an immediate threat of
23 death or serious bodily injury. Further, LVMPD was aware that their police officers
24 had a problem of using excessive and unreasonable force, including deadly force
25 and the use of less than lethal rounds, against individuals. In other words, LVMPD
26 was aware that there was a problem involving numerous officer involved shootings
27 (both lethal and non-lethal rounds) of individuals which could have been reasonably
28 avoided had the officers employed well known and accepted police tactics and

1 techniques to avoid having to unnecessarily use excessive force, including deadly
2 force, against these individuals who keep getting shot by LVMPD officers.

3 98. LVMPD was aware that failure to implement proper training with
4 regards to their officers use of force, including deadly force, would result in
5 LVMPD continuing to have numerous unreasonable officer involved shootings of
6 individuals.

7 99. The training that LVMPD police officers, including Officers
8 FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-5, should have
9 received with regards to the use of force, including deadly force, against individuals
10 includes training that officers not use less than lethal rounds on individuals
11 peacefully protesting, to not use deadly force against individuals who have guns on
12 their person and are in compliance with Nevada's "open carry" laws, using force,
13 including deadly force, against individuals who are running away from the police, to
14 first exhaust all less than lethal alternatives before resorting to the use of deadly
15 force when reasonable, to give a verbal warning that deadly force would be used
16 prior to shooting and to not use deadly force against an individual unless he poses an
17 immediate or imminent threat of death or serious bodily injury. On information and
18 belief, the training provided to LVMPD police officers, including Officers
19 FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-5, with regards to
20 the use of force, including deadly force, against individuals did not include this
21 type of training.

22 100. The training that LVMPD police officers, including Officers
23 FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-5, received with
24 regards to using force, including deadly force, was inadequate because it has
25 continuously resulted in numerous unreasonable uses of force by LVMPD police
26 officers (going back at least five (5) years). Further, the training that LVMPD
27 police officers, including Officers FRYMAN, EMERTON, FERGUSON,
28 LOCHER, and DOES 1-5, received with regards to using force, including deadly

1 force, was inadequate because it failed to implement well known and accepted
2 police tactics and techniques for dealing with individuals, including individuals
3 who guns on their person in compliance with state law, who are peacefully
4 protesting, and who are running away from the police. Theses well known and
5 accepted police practices and techniques are routinely used to train law enforcement
6 from other agencies throughout the County.

7 101. The failure of the Defendant LVMPD police department to provide
8 adequate training with regards to the use of force, including deadly force, caused the
9 deprivation of the Plaintiffs' rights by Officers FRYMAN, EMERTON,
10 FERGUSON, LOCHER, and DOES 1-5. In other words, the Defendant's failure to
11 train is so closely related to the deprivation of the DECEDENT/Plaintiffs' rights as
12 to be the moving force that caused the ultimate injury.

13 102. By failing to provide adequate training LVMPD's police officers,
14 including Officers FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-
15 5, acted with an intentional, reckless, and callous disregard for the life of
16 DECEDENT, and DECEDENT's and Plaintiffs' constitutional rights. Defendants
17 DOES 6-10, each of their actions were willful, wanton, oppressive, malicious,
18 fraudulent, and extremely offensive and unconscionable to any person of normal
19 sensibilities.

20 103. By reason of the aforementioned acts and omissions of Defendants
21 DOES 6-10, Plaintiffs were caused to incur medical expenses, incur funeral and
22 related burial expenses, and loss of financial support.

23 104. By reason of the aforementioned acts and omissions of Defendants
24 DOES 6-10, Plaintiffs have suffered loss of love, companionship, affection,
25 comfort, care, society, and future support.

26 105. Accordingly, Defendants DOES 6-10, each are liable to Plaintiffs for
27 compensatory damages under 42 U.S.C. § 1983.

28 106. Plaintiffs seek wrongful death and survival damages under this claim.

107. Plaintiffs also seek statutory attorney fees under this claim.

SEVENTH CLAIM FOR RELIEF

Municipal Liability— Ratification (42 U.S.C. § 1983)

(Against Defendants DOES 6-10 and LVMPD)

108. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through 107 of this Complaint with the same force and effect as if fully set forth herein.

109. Officers FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-5 acted under color of law when they shot DECEDENT with both nonlethal and lethal rounds.

110. The acts of Officers FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-5 deprived DECEDENT and Plaintiffs of their particular rights under the United States Constitution.

111. DOES 6-10 acted under color of state law.

112. DOES 6-10 had final policymaking authority of Defendant LVMPD concerning the acts of Officers FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-5.

113. DOES 6-10 ratified Officers FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-5 acts, including their shooting of DECEDENT. That is DOES 6-10 knew of and specifically made a deliberate choice to approve FRYMAN, EMERTON, FERGUSON, LOCHER's acts and the basis for it.

114. On information and belief, DOES 6-10 knew that DECEDENT had been peacefully protesting then complied with a law enforcement order to disperse and was walking back to his parked vehicle when he was shot with less than lethal rounds then ultimately shot with lethal rounds, that DECEDENT was in compliance with state law with regards to having his guns and vest on him, that he never pointed a gun at anyone, that he never shot or tried to shoot at anyone, he never charged at

1 any of the officers, ran away from the officers, never verbally threatened anyone
2 and never physically injured anyone nor did he ever attempt to do so.

3 115. On information and belief, the official policies with respect to the
4 incident are that officers are not to use deadly force against an individual unless the
5 individual poses an immediate risk of death or serious bodily injury to the officers or
6 others, or if the individual has inflicted death or serious bodily injury against
7 someone or threatened to do so, the officers may use deadly force to prevent the
8 individual's escape. The officers' actions deviated from these official policies
9 because DECEDENT did not pose an immediate threat of death or serious bodily
10 injury to the involved officers or anyone, including but not limited to, because
11 DECEDENT had been peacefully protesting then complied with a law enforcement
12 order to disperse, then began to walk back to his parked vehicle so he could leave
13 the area when he was shot with less than lethal rounds and ultimately with lethal
14 rounds, DECEDENT was in compliance with state law with regards to having his
15 guns and vest on him, he never pointed a gun at anyone, he never shot or tried to
16 shoot at anyone, he never charged at any of the officers, he ran away from the
17 officers, he never verbally threatened anyone and never physically injured anyone
18 nor did he ever attempt to do so. Further, the involved officers also deviated from
19 the official policies because pursuant to the official policies of the LVMPD Police
20 Department, the officers could not use deadly force to prevent DECEDENT from
21 escaping because he did not inflict death or serious bodily injury on anyone nor did
22 he threaten to do so.

23 116. On information and belief, the LVMPD approved of the Officers
24 FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-5's actions after a
25 hearing presented by the officers' legal counsel to DOES 6-10, after which DOES 6-
26 10 found the officers' actions to be within the official policies of LVMPD. On
27 information and belief, the basis for such approval was based on the officers' self-
28 serving statements that they feared they were about to be shot and killed by

1 DECEDENT, despite the plethora of evidence to the contrary, including evidence
2 that the DECEDENT had been peacefully protesting then complied with a law
3 enforcement order to disperse, then began to walk back to his parked vehicle so he
4 could leave the area when he was shot with less than lethal rounds and ultimately
5 with lethal rounds, DECEDENT was in compliance with state law with regards to
6 having his guns and vest on him, he never pointed a gun at anyone, he never shot or
7 tried to shoot at anyone, he never charged at any of the officers, he ran away from
8 the officers, he never verbally threatened anyone and never physically injured
9 anyone nor did he ever attempt to do so.

10
11 **EIGHTH CLAIM FOR RELIEF**

12 **Battery (State Law Claim for Battery)**

13 (Wrongful Death/Survival)

14 (Against Defendants LVMPD, FRYMAN, EMERTON, FERGUSON, LOCHER,
15 and DOES 1-5)

16 117. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
17 through 116 of this Complaint with the same force and effect as if fully set forth
18 herein.

19 118. Defendants FRYMAN, EMERTON, FERGUSON, LOCHER, and
20 DOES 1-5, while working as police officers for LVMPD, and acting within the
21 course and scope of their duties, intentionally shot DECEDENT multiple times with
22 both nonlethal and lethal rounds. As a result of the actions of Officers FRYMAN,
23 EMERTON, FERGUSON, LOCHER, and DOES 1-5, DECEDENT suffered severe
24 mental and physical pain and suffering, loss of enjoyment of life and ultimately died
25 from his injuries and lost earning capacity. Officers FRYMAN, EMERTON,
26 FERGUSON, LOCHER, and DOES 1-5 had no legal justification for using force,
27 including deadly force, against DECEDENT and said Defendants' use of force
28 while carrying out their officer duties was an unreasonable use of force, especially

1 since DECEDENT had just been peacefully protesting then complied with a law
2 enforcement disbursement order and was walking back to his parked vehicle so he
3 could leave the area, DECEDENT was in compliance with state law with regards to
4 having his guns and vest on him, he never pointed a gun at anyone, shot or tried to
5 shoot at anyone, he never charged at any of the officers, he ran away from the
6 officers, he never verbally threatened anyone, he never physically injured anyone,
7 nor did he ever attempt to do so and the officers did not give a verbal warning that
8 deadly force would be used prior to the shooting. As a direct and proximate result
9 of Defendants' conduct as alleged above, Plaintiffs suffered extreme and severe
10 mental anguish and pain and have been injured in mind and body. Plaintiffs also
11 have been deprived of the life-long love, companionship, comfort, support, society,
12 care and sustenance of DECEDENT, and will continue to be so deprived for the
13 remainder of their natural lives. Plaintiffs also are claiming funeral and burial
14 expenses and a loss of financial support.

15 119. LVMPD is vicariously liable for the wrongful acts of Defendants
16 FRYMAN, EMERTON, FERGUSON, LOCHER, and DOES 1-5 because they were
17 acting under color of law and within the course and scope of their employment as
18 police officers for LVMPD.

19 120. The conduct of Officers FRYMAN, EMERTON, FERGUSON,
20 LOCHER and DOES 1-5 was malicious, wanton, oppressive, and accomplished
21 with a conscious disregard for the rights of Plaintiffs and DECEDENT, entitling
22 Plaintiffs and DECEDENT, to an award of exemplary and punitive damages.

23 121. Plaintiffs are seeking both survival and wrongful death damages under
24 this claim.

NINTH CLAIM FOR RELIEF

Negligence (State Law Claim for Negligence)

(Wrongful Death/Survival)

(Against All Defendants)

122. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through 121 of this Complaint with the same force and effect as if fully set forth herein.

123. The actions and inactions of the Defendants were negligent and reckless, including but not limited to:

- a. the failure to properly and adequately train employees, including Officers FRYMAN, EMERTON, FERGUSON, LOCHER and DOES 1-5, with regards to the use of force, including deadly force;
- b. the failure to properly and adequately assess the need to detain, arrest, and use force, including deadly force against DECEDENT;
- c. the negligent tactics and handling of the situation with DECEDENT, including pre-shooting negligence;
- d. the negligent detention, arrest, and use of force, including deadly force, against DECEDENT;
- e. the failure to provide prompt medical care to DECEDENT;
- f. the failure to properly train and supervise employees, both professional and non-professional, including Officers FRYMAN, EMERTON, FERGUSON, LOCHER and DOES 1-5;
- g. the failure to ensure that adequate numbers of employees with appropriate education and training were available to meet the needs of and protect the rights of DECEDENT;

- h. the negligent handling of evidence and witnesses;
- i. the negligent handling of individuals peacefully protesting, including after a disbursement order is given by law enforcement;
- j. the negligent handling of individuals with guns on them in compliance with state law; and
- k. the negligent handling of individuals who are running away from the police.

124. As a direct and proximate result of defendants' conduct as alleged above, and other undiscovered negligent conduct, DECEDENT was caused to suffer severe pain and suffering and ultimately died and lost earning capacity. Also as a direct and proximate result of defendants' conduct as alleged above, Plaintiffs suffered extreme and severe mental anguish and pain and have been injured in mind and body. Plaintiffs also have been deprived of the life-long love, companionship, comfort, support, society, care and sustenance of DECEDENT, and will continue to be so deprived for the remainder of their natural lives. Plaintiffs also are claiming funeral and burial expenses.

125. LVMPD is vicariously liable for the wrongful acts of Officers FRYMAN, EMERTON, FERGUSON, LOCHER and DOES 1-5 because they acted under color of law and within the course and scope of their employment as police officers for LVMPD.

126. The negligent acts of Officers FRYMAN, EMERTON, FERGUSON, LOCHER and DOES 1-5 resulted in bodily harm, including death, to DECEDENT. Plaintiffs are seeking wrongful death damages and survival damages under this claim.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs JEANNE LLERA and JORGE L. GOMEZ, as the appointed co-special administrators of the estate of JORGE A. GOMEZ; JEANNE LLERA; and JORGE L. GOMEZ request entry of judgment in their favor and against Defendants LAS VEGAS METROPOLITAN POLICE DEPARTMENT; RYAN FRYMAN; DAN EMERTON; VERNON FERGUSON; ANDREW LOCHER; AND DOES 1-10, inclusive, as follows:

A. For compensatory damages, including both survival damages and wrongful death damages under federal and state law, in the amount to be proven at trial;

B. For funeral and burial expenses;

C. For medical billing and expenses;

D. For punitive damages against the individual defendants in an amount to be proven at trial;

E. For interest;

F. For reasonable costs of this suit and statutory attorneys' fees; and

G. For such further other relief as the Court may deem just, proper, and appropriate.

DATED: August 5, 2020

GONZALEZ & FLORES LAW FIRM
CLAGGETT & SYKES LAW FIRM

Bv _____

Rodolfo Gonzalez, Esq.
Edgar Flores, Esq.
Sean Claggett, Esq.
Steve Lewis, Esq.
Attorneys for Plaintiffs

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs hereby demand a trial by jury.

3
4
5 DATED: August 5, 2020

GONZALEZ & FLORES LAW FIRM
CLAGGETT & SYKES LAW FIRM

6
7 By _____
8 Rodolfo Gonzalez, Esq.
9 Edgar Flores, Esq.
10 Sean Claggett, Esq.
11 Steve Lewis, Esq.
12 *Attorneys for Plaintiffs*
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28